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ON PAGE I-5

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# Kelley Praises Decision Not to Prosecute Mail Openings

FBI Chief's Comment on CIA Cases Seen as Move  
to Protect FBI Agents Who Committed Burglaries

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WASHINGTON—FBI Director Clarence M. Kelley, in what was seen as the opening of a campaign to head off prosecution of FBI officials for burglaries, Wednesday praised the decision not to prosecute CIA agents for illegal mail openings.

Kelley, speaking to the Lawyers Assn. of Kansas City, said a Department of Justice report announcing the decision last month was "superb."

"The report pointed out that the state of the law that prevailed at the time of the mail openings was different from its state today," Kelley said.

Justice Department officials said some lawyers for FBI men currently under investigation for burglaries, wiretapping and mail openings, chiefly in the New York area, had made a similar argument.

That view also is widely held at FBI headquarters, where one source asked Wednesday how the Justice Department could apply "one standard for mail openings and another for surreptitious entries."

Quoting from the department's report on CIA mail openings from 1953 to 1973, Kelly said: "It would be mistaken to suppose that it was always clearly perceived that the particular mail opening programs of the CIA were obviously illegal."

"The department believes that this opinion is a serious misperception of our nation's recent history, of the way the law has evolved and the factors to which it responded—and substitution of what we now believe is and must be the case for what was."

The investigation of FBI officials for the break-ins and other allegedly illegal actions, under supervision of the Justice Department's civil rights division, is expected to be concluded in the next six weeks.

A federal grand jury in New York has completed its major work in the case and department lawyers are understood to be drawing up recommendations for submission to Atty. Gen. Griffin B. Bell.

An FBI spokesman denied that Kelley's praise of the department's decision in the CIA case signaled an effort to discourage prosecution in the FBI case. "There's no plan here to head off surreptitious entry indictments," the spokesman said.

The CIA mail opening involved correspondence between people in the United States and people in the Soviet Union and the People's Re-

public of China. The primary target of the FBI break-ins, wiretaps and mail openings between 1970 and 1973 were associates and relatives of fugitive members of the Weather Underground terrorist group.

A Justice Department official, familiar with both investigations, said Wednesday that a key factor in the decision not to prosecute the CIA agents was absent from the FBI case—that was that the mail openings seemed to be authorized by federal officials outside the CIA.

After citing conflicting evidence that various Presidents and Cabinet officials had knowledge of the 20-year mail opening operation, the Justice Department report said: "On the existing record, the government could not prove in a criminal prosecution beyond reasonable doubt that the (mail opening) was conducted without presidential approval or without presidential knowledge and acquiescence."

As far as could be learned, the federal grand jury has not been able to trace responsibility for the break-ins and related actions above the level of present and former officials who held FBI posts below the rank of director.

However, an FBI source said Wednesday that some documentary evidence in the break-in case included the initials of previous attorneys general who were in office at the time of the illegal actions.

The source refused to identify the attorneys general but said that the documents were summaries of information gleaned from the break-ins and illicit surveillance.

"Even without the initials, a prudent man would have to recognize" that the information came from a surreptitious entry, the source said.